IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1716

NORBERT A. LAING, an individual, on behalf of himself and all other persons, associations, firms and corporations similarly situated,

Petitioner,

vs.

MINNESOTA VIKINGS FOOTBALL CLUB, INC. John Doe, Richard Roe, et al., A.B.C., Inc., et al.,

Respondents.

SUPPLEMENTAL BRIEF NUMBER THREE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

This Supplemental Brief Number Three In Support of the Petition For Certiorari is filed pursuant to Supreme Court Rule 24, paragraph 5 to call the attention of this Court to other intervening matter not available at the time of Petitioner's last filing.

On Wednesday, September 18, 1974, the Minneapolis Star printed a story on "Mr. 'M': Paul Giel", the Athletic Director of the University of Minnesota. A portion of said newspaper story is directly relevant to the competitive effect issue herein. That portion of the story is reprinted hereinafter for convenience of attention and the entire story is reprinted in the Appendix hereto.

> "He has no doubts that the principal competition he is facing is professional sports as represented by the Vikings, North Stars, Fighting Saints and Twins.
>
> 'Do you realize the pressure on us in the backyard of the pros? Look at Purdue, they pack 'em in, 55,000 a game. It's the only show in town.' "

The competitive sports cited by Mr. Giel are *exactly* those listed by Petitioner. The Affidavit by John E. Thomas, one of Petitioner's counsel herein, in the Record before the District Court and in the Appendix before the Eighth Circuit, cited evidence of such competition and especially *football* competition between the Vikings and the Minnesota Gophers.

It is respectfully submitted that Petitioner has shown enough for outright reversal, but at the very least, sufficient grounds for remand under 28 U.S.C. section 2106 especially on the very important antitrust question of definition of the relevant competitive products market.

Respectfully submitted,

COCHRANE & BRESNAHAN, P.A.
By JOHN A. COCHRANE
JOHN E. THOMAS
830 Minnesota Building
St. Paul, Minnesota 55101
Attorneys for Petitioner

Of Counsel:
CHESTNUT, BROOKS & BURKARD, P.A.
By JOSEPH T. BURKARD
854 Midland Bank Building
Minneapolis, Minnesota 55401

APPENDIX

THE MINNEAPOLIS STAR
Wednesday, September 18, 1974

Mr. M: Paul Giel

By PETER VAUGHAN
Minneapolis Star Staff Writer

Optimism is Paul Giel's stock in trade.

He was hoping not to see an empty seat at Saturday's University of Minnesota-Ohio State football game.

But the 41-year-old university athletic director is also a realist. Two days before the game, he knew there would be a lot of empty seats.

He sat beind a cluttered desk in his comfortable office in the Bierman Athletic Field Building and earnestly explained his immediate and future hopes for the department he inherited nearly three years ago when it was in a financially troubled and dispirited state.

"Sure, we will need good luck to get to 50,000 Saturday," he said. "I am a little disappointed. I would have liked to have packed them in for Ohio State. But it makes a difference with no students here yet."

Giel was right. The game, played in nearly perfect football weather, drew 45,000 persons to old Memorial Stadium, which has a capacity of 57,000.

Yet Giel doesn't dwell on the present shortcomings; he looks to the future:

"I am really looking forward to the day when I get calls the day before a game asking for tickets. When they say, 'I don't care if the seats are in the bowl end, just get me in,' then I will know I have done a job."

A slight edge of bitterness etched his words as he continued:

"I would like to be able to turn that guy down, tell him there weren't any tickets and ask him, 'where were you three years ago when we needed you?'"

When Giel took the job, he found himself looking at a $400,000 deficit and the virtual certainty that the deficit would climb for at least the next two years.

"I think I was realistic about what I was facing but I didn't know the magnitude of it. It wasn't just football, a big sport, or basketball, a big sport, but 11 sports, coaches, the news media, the Big Ten, the NCAA, image-building and public relations," he said.

"At the end of the first day (as athletic director), I would have done just about anything to get out of it. I had visited with (athletic director) Marsh Ryman. He was not bitter but he was disappointed.

"I talked to Glenn Reed (assistant athletic director). He was the heir apparent and my contemporary at the university. Here were two people who had given their lives to the school. They were heartbroken and I was trying to find out what the problems were.

"I took a wrong turn on the way home and got lost, it was so bad," Giel said.

While Giel had his initial fears, those around him were impressed only by his enthusiasm.

"I think he has been tremendous from the first day he came in here," said Dick Siebert, the baseball coach.

"He took charge. Everyone knew he was going to be the boss. He has far surpassed my wildest dreams," he said.

One of Giel's assets in the eyes of his coaches is that he is willing to give the golf team as much attention as the football team.

"Paul is a fellow you can sit down and talk to anytime you want. He has just as much time for the baseball coach or track coach as he does for the football coach," Siebert said.

Giel talks with open pride of hockey coach Herb Brooks and his 1974 NCAA championship team. One of the first things Giel did after Brooks was hired was to authorize the granting of six full hockey scholarships rather than the four that had been approved under the previous administration.

While Giel has not returned the athletic department to the black in his nearly three years at the helm, he added only $20,000 to the department's deficit this year, compared to the $400,000 that was added during his first two years.

The football team isn't playing to full houses but average attendance climbed from 37,000 in 1972 to 42,000 in 1973.

Giel has a good idea of where he wants to go:

"I want very badly to have a total program in 11 sports. I don't believe you can justify intercollegiate athletics on the basis of gate receipts.

"We must somehow maintain a total program and a winning program. I want to win within the rules and with good people that young men can identify with.

"I would like to flip a coin and have a chance in football with Michigan, Ohio State and Nebraska. I would like to go to the Rose Bowl. I would like to take on a North Carolina State or a UCLA in basketball. We have had that with Minnesota youngsters in hockey," Giel said.

He has no doubts that the principal competition he is facing is professional sports as represented by the Vikings, North Stars, Fighting Saints and Twins.

"Do you realize the pressure on us in the backyard of the pros? Look at Purdue, they pack 'em in, 55,000 a game. It's the only show in town."

When Giel arrived he found not only a divided department but also a public attitude toward the Golden Gophers that bordered on apathy.

Most observers say Giel's presence has cured the first problem. His answer to the second was a massive effort to create a new image for university teams, particularly the football squad.

Giel is forever on the go, speaking two times a day at least two days a week to groups almost anywhere in the state. He tries to build support for his athletic program and seeks donors for the Williams Memorial Fund, which not only provides scholarships for athletes but also pumps additional money into the department.

In 1974 the fund was given $243,000, of which about $90,000 went to scholarships, Giel said.

The remainder went to what Giel calls "discretionary" expenses, including a plane trip rather than a car ride to a tournament for the golf team, five days at an Alexandria resort for the football squad and a new batting cage for Siebert's baseball team.

Giel admits that the effort he puts into the job causes a little strain on his family life, especially during football season.

Giel's wife, Nancy, says she knew the season had arrived last week when her husband woke up at 3 a.m. and mumbled something about Ohio State.

However, Mrs. Giel thinks that her husband's schedule is

at least more convenient than his hours at WCCO radio, where he was sports director and had to broadcast at 7 a.m. and 10:30 p.m. six days a week. And they look forward to family skiing trips in the winter.

There is no doubt Giel has virtually every segment of the university behind him in his effort to turn the university's athletic programs around.

"I think he has done a remarkable job," said E. W. Ziebarth, who was acting president during part of Giel's term as athletic director.

"He has been a remarkable success. I know of no one on the national scene who could have done it with as much grace as Paul," he said.

Prof. Merle Loken, the university's Big Ten faculty representative, said, "The reason I took on the job of faculty representative is because of my respect for Mr. Giel. He is doing a tremendous job for the athletic programs at the 'U'."

One is hard pressed to find any detractors.

As Giel's friend Harvey MacKay put it, "About the only criticism you will hear about Paul is that he is too nice a guy."

In many observers' eyes, Giel has been an asset for the university since his first day on the campus in 1950, when he was a baby-faced freshman from Winona with a formidable reputation as a football halfback and baseball pitcher.

As a sophomore, Giel slipped on jersey No. 10 and quickly established himself as the first-string tailback in Minnesota's single-wing offense.

MacKay, an active member of the university's (alumni) M Club, remembers Giel well:

"He was shy and sincere as hell. He was always completely dedicated to whatever he was going to do. He was a ferocious competitor."

When Giel attended the university, Siebert was, as he is now, the university baseball coach.

He says Giel singlehandedly turned the baseball program from a mediocrity to the university's most successful intercollegiate athletic program.

"From the first time Paul Giel walked on the baseball field, our baseball fortunes started to climb," Siebert said.

Giel received All-America honors in football and in his senior year narrowly missed winning college football's highest individual honor, the Heisman Trophy.

After his college years, which he remembers as filled with "the golden-boy business," Giel became a "bonus baby" with the New York (baseball) Giants. It was 1954 and Giel, as the rules required, stayed with the major league club, sitting on the bench while his teammates won the National League pennant.

The next year he pitched sporadically for the Giants and compiled a 4-and-4 record before leaving for a two-year hitch with the Army in Germany.

When he returned from the Army for the 1958 season, the Giants were in San Francisco and Giel found the two-year layoff from big-league competition had dulled his talent.

"I didn't have quite enough major league ability. I didn't have a real good, major-league fastball so it was either triple-A ball or being the 10th man on a 10-man staff in the majors," he recalls.

So Giel began what his wife remembers as "our nomad days."

They shuffled from San Francisco to Phoenix to Pittsburgh, to Columbus and Salt Lake City, finally winding up in the Twin Cities in 1961 as the property of the Minnesota Twins, embarking on their first season in Minnesota.

Paul, however, began to have increasing doubts about his ability to make it in the big leagues.

"I thought there has to be something else. The whole situation had been eating me up," he said.

So when the Twins traded him to Kansas City in June 1961, he pitched in one game and then said good-by to baseball.

Giel went back to football as an assistant business manager for the new Minnesota Vikings.

After two years, Giel's career took another turn when he received a call from Larry Haeg, then general manager of WCCO radio.

The station had decided it wanted a sports director, Haeg recalls.

"Looking things over, I said, 'What about Paul Giel. He is an All-American, established, came back to Minnesota to work, has a lot of friends, good contacts, no skeletons anywhere.'

"On top of that he was a good, wholesome, outgoing person who could generate respect."

Haeg recalls that he threw Giel into the job with little preparation.

"There was a 7:15 a.m. sports program in those days," Haeg said, "and I told Paul we would put him on immediately.

"He said, 'I can't do that right away,' and I told him there is only one place to learn and that is on the air.

"I listened to that first broadcast not so much for the capability of a finished broadcaster but whether Paul could project the kind of person he was. His sincerity and confidence came through although he stumbled a lot.

Giel, too, remembers those early days at WCCO:

"The first two or three years I was there, I would silently hope that the Twins' game would go so long

that I wouldn't have to go on after the game. I was awful. I couldn't enunciate."

Giel spent eight years at WCCO and according to Haeg became "a very fine broadcaster."

Then, late in 1971, Giel received a phone call from university President Malcolm Moos. He wasn't surprised.

"I knew something was going to happen at the school," Giel recalled. "I would be thinking that if we made a change who would be the football coach or the athletic director. I thought Gordy Soltau would be good. He was successful, clean, articulate.

"Then my ego took over. I thought, 'You have the background for it. You have enough maturity now.' Knowing the territory, I wondered if someone might ask me."

While Giel was pondering, so were university officials.

Stanley Wenberg was a vice-president with responsibility for intercollegiate athletics at the time.

"We talked over the need for a change and I suggested Paul Giel," Wenberg said.

"He had built up a remarkable public acceptance. He had a natural way with people that inspired confidence. The reaction was uniformly positive but we were told, 'You can't get him away from 'CCO.' "

Nevertheless, it was decided to give Giel a try and Moos made the call.

After an off-again-on-again change of mind, Giel took the job for keeps in January 1972.

Why did he leave what he calls the "comfort zone" of WCCO for the financially troubled, dissension-riddled university athletic department?

"It was the moment of truth," Giel said. "I had turned down the job once. I felt I belonged at 'CCO. Things were good for me. Then, one day I was interviewing Bud Grant. I wasn't nervous doing the interview the way I was when I started and I thought, 'Is this what you want to be doing in 20 years?'

"I thought, 'Do I have something else to offer? I can accept the challenge and take on what is said to be an impossible situation and turn it around. That's what Paul Giel can do.'

"I really wanted to find out something about myself," Giel said.